Canada Industrial Relations Board Conseil canadien des relations industrielles

C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ont. K1A 0X8
Édifice C.D. Howe, 240, rue Sparks, 4e étage Ouest, Ottawa (Ont.) K1A 0X8

Reasons for decision

Teamsters Local Union No. 879,

applicant,

and

United Parcel Service Canada Ltd.,

respondent.

Board File: 28533-C
Neutral Citation: 2011 CIRB 591
June 3, 2011

The Canada Industrial Relations Board (the Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. John Bowman and David P. Olsen, Members.

Counsel of Record

Ms. Joanne L. McMahon, for Teamsters Local Union No. 879; and
Mr. Denis Manzo, for United Parcel Service Canada Ltd.

These reasons for decision were written by Mr. Graham J. Clarke, Vice-Chairperson.

I–Nature of the Complaint

[1] Section 16.1 of the *Canada Labour Code* (*Part I–Industrial Relations*) (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of

the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine this application for certification without an oral hearing.

[2] On January 12, 2011, the Board received from Teamsters Local Union No. 879 (Teamsters) a certification application for a bargaining unit at United Parcel Service Canada Ltd. (UPS).

[3] The Teamsters' certification application sought to represent the following bargaining unit located in Windsor, Ontario:

> All Ground Centre employees of United Parcel Service of Canada Ltd. in Windsor, Ontario, employed as clerical employees, including but not limited to data entry clerks, document auditors, operations management specialists etc., save and except supervisors and those above the rank of supervisor.
>
> [sic]

[4] Recently, the Teamsters have been applying to represent clerical employee bargaining units at distinct UPS geographic locations in Ontario. The Board has certified several of those bargaining units.

[5] While other certification applications filed by the Teamsters sought to represent all clerical employees working at a distinct geographic location, this application sought to represent only some of the clerical employees at the Windsor location.

[6] The Board has determined that the bargaining unit sought by the Teamsters is not appropriate for collective bargaining. An appropriate bargaining unit would encompass all clerical employees working at the Windsor location. The Teamsters had insufficient support for this bargaining unit.

[7] The Board accordingly dismisses the Teamsters' certification application for the reasons set out herein.

II–Facts

[8] The Teamsters have been organizing geographic-specific bargaining units at UPS. The Board has already issued bargaining unit orders for distinct units in Stoney Creek, Ontario (Order no. 10012-U), St. Catharine's, Ontario (Order no. 10037-U) and Brantford, Ontario (Order no. 10044-U).

[9] UPS, whose business involves small package delivery both in Canada and internationally, has business operations in Windsor. UPS imports and clears packages through the Canada Border Services Agency.

[10] UPS has a longstanding collective bargaining history with the Canada Council of Teamsters for a Canada-wide bargaining unit (Order no. 6044-U):

> ...all employees of United Parcel Service Canada Ltd. employed as feeder drivers, package drivers, mechanics, service workers, preloaders, sorters, package handlers, air drivers, air walkers, clearance center employees who load, unload or sort packages who do not process documentation, and customer counter clerks, excluding supervisors, persons above the rank of supervisor, office, clerical, technical and sales personnel.

[11] UPS, as it has done in other recent Teamsters' certification applications for distinct geographic bargaining units, contested the appropriateness of the Windsor bargaining unit.

[12] UPS employs approximately 465 employees across Canada in its clerical classifications. UPS argued it would be inappropriate to certify a bargaining unit at Windsor composed of clerical employees when there are similarly situated clerical employees holding the same jobs at its other 43 locations across Canada.

[13] UPS has consistently argued that an appropriate unit must cover all clerical employees across Canada. As UPS wrote in its January 24, 2011 response to the application, the Teamsters' proposed unit "would create the unacceptable precedent of multiple small bargaining units operating in the shadow of the existing bargaining unit which covers more than 6000 employees".

[14] For the specific Windsor situation, UPS argued that the proposed bargaining unit, which the Teamsters estimated to include 12 clerical employees, really covered 53 employees. The Windsor location, for descriptive purposes only, can be described as being composed of two centres. UPS disputed the existence of two centres.

[15] The central issue concerns whether the Teamsters could be certified for the "Ground Centre" clerical employees, but not for those working at the "International Centre". The Teamsters argued that a smaller geographic bargaining unit can be appropriate, even if not the most appropriate unit.

[16] The Teamsters maintained that there were two distinct work centres at UPS' Windsor location and argued a unit limited to clerical employees working only at the Ground Centre could be an appropriate bargaining unit.

[17] The Board's newly streamlined certification procedure requires its Industrial Relations Officer (IRO) to provide the Board with a report of his or her understanding of the proposed bargaining unit. This replaced the prior practice which obliged the IRO to investigate every certification application. That process slowed down many straightforward certification applications.

[18] The Board's Information Circular No. 7 summarizes an IRO's investigation of a certification application:

> The Board will appoint one of its [industrial] relations officers, usually someone from an office nearby, to conduct an investigation of the application. The employee list and organizational chart provided by the employer will be disclosed to the union in the course of the investigation. Except in cases where the Board may require additional information, the investigating officer will only provide the parties with a letter setting out his or her understanding of the proposed bargaining unit and any disputed positions together with the list of documents filed with the Board. A copy of the letter or the report is disclosed to the parties, as are copies of all written submissions that have been sent to the Board by the union, the employer, employees and any other parties.
>
> (emphasis added)

[19] In this case, the Board asked its IRO to conduct a supplementary investigation about UPS' Windsor location.

[20] After the further investigation, which included an April 14, 2011 visit to the Windsor location, and a review of the parties' supplemental written submissions, the IRO prepared a supplementary Investigation Report dated April 18, 2011. The Board provided the parties with an opportunity to comment on the IRO's supplementary report.

[21] The Board has considered the supplementary information and will summarize the material facts for this certification application.

[22] The Windsor Ground Centre receives packages from the Toronto hub and other locations such as the Hamilton airport. Ground Centre employees sort and load the packages into trucks for delivery to locations near Windsor. The Ground Centre clerical employees also key enter packages that originate in the Windsor area and are destined for international locations.

[23] The International Centre receives packages from the United States through the U.S. ground operations network. International Centre clerical employees key enter these packages and load them into trailers which then transport them to other UPS delivery centres for delivery.

[24] Employees working at either the Ground Centre or International Centre are supposed to use the employee entrance for entering and exiting the building. However, on occasion, employees may use the customer centre entrance.

[25] The work area in the Windsor building is one large space; the Ground Centre is on the right-hand side while the International Centre is on the left.

[26] There are no walls or doors separating the two centres. Employees, whether working in the International Centre or Ground Centre, use the same parking lot and lunchroom. There are common washrooms.

[27] The salaries for the clerical employees are determined by the grade they start at and are not contingent on whether the employee works in the Ground Centre or the International Centre. That pay scale is the same for clerical positions across all UPS centres, with the exception of the Toronto

hub which adopted a higher pay scale due to the cost of living.

[28] There are separate vacation sign-up sheets for clerical employees in the Ground and International Centres. Employees from each centre may participate in joint training sessions.

[29] All clerical employees, whether working at the Ground or International Centre, are required to key enter packages. The Teamsters argued that UPS has decided to establish distinct centres in its locations, such as the two in Windsor and the seven at their Toronto facility.

[30] For Windsor employees covered by the national bargaining unit, seniority is by classification within each centre. There are different supervisors for the International Centre and the Ground Centre. Those supervisors report to the same business manager, Mr. Carl Toth (Mr. Toth). Mr. Toth is the district manager for all UPS facilities south of Woodstock, Ontario, and has authority over the UPS centres in London and Chatham, in addition to those in Windsor.

[31] Employees in one centre will rarely substitute for those in the other Windsor centre.

[32] The Teamsters noted that the Windsor unionized employees acquire seniority by centre. There is no interchangeability, except as provided in the collective agreement. The Teamsters have negotiated special provisions in the collective agreement to allow unionized employees in one centre to apply for vacancies at the other centre.

[33] For the national bargaining unit, there is no watertight separation between the two union stewards in Windsor, though each one normally handles matters at only one centre.

III–Issues

[34] This application for certification raises two distinct issues:

> A–Is it appropriate for the Board to certify a bargaining unit at one distinct geographical UPS location?; and

B–Is the Teamsters' proposed bargaining unit at the Windsor facility appropriate for collective bargaining?

IV–Analysis and Decision

A–Is it appropriate for the Board to certify a bargaining unit at one distinct geographical UPS location?

[35] Section 24(1) of the *Code* grants the trade union, at least initially, the right to suggest the appropriate bargaining unit in a certification application:

> 24. (1) A trade union seeking to be certified as the bargaining agent for a unit that the trade union considers constitutes a unit appropriate for collective bargaining may, subject to this section and any regulations made by the Board under paragraph 15(*e*), apply to the Board for certification as the bargaining agent for the unit.
>
> (emphasis added)

[36] While the trade union can initially frame the scope of its appropriate bargaining unit, ultimately the Board has to decide whether that unit constitutes an appropriate bargaining unit:

> 28. Where the Board
>
> (*a*) has received from a trade union an application for certification as the bargaining agent for a unit,
>
> (*b*) has determined the unit that constitutes a unit appropriate for collective bargaining, and
>
> (*c*) is satisfied that, as of the date of the filing of the application or of such other date as the Board considers appropriate, a majority of the employees in the unit wish to have the trade union represent them as their bargaining agent,
>
> the Board shall, subject to this Part, certify the trade union making the application as the bargaining agent for the bargaining unit.
>
> (emphasis added)

[37] The Board does not determine the most appropriate bargaining unit. Rather, the *Code* at section 28(*b*) is explicit that the Board must determine "a unit appropriate for collective bargaining".

[38] The Board has determined previously that a bargaining unit at a distinct UPS location, while perhaps not the most appropriate bargaining unit, can nonetheless be an appropriate bargaining unit: *United Parcel Service Canada Ltd.*, 2008 CIRB 433 (*UPS 433*).

[39] The Board noted in *UPS 433* that, while it generally favours larger all-employee bargaining units, it can consider things such as geographical factors, as well as the ability of employees to obtain representation, as factors when determining an appropriate bargaining unit:

> [21] It is important to note that although the Board generally favours all-employee bargaining units or creating larger bargaining units, it will nevertheless create less than all-encompassing units or fragment an existing unit when there are compelling reasons to do so. The factors that favour smaller units include a lack of community of interest, geographical factors, specific statutory provisions, the likelihood that a larger unit would not be viable, and an interest in enabling employees to obtain representation.
>
> (emphasis added)

[40] *UPS 433* was a decision reconsidering the Board's decision to certify a unit of certain UPS employees working in Lachine, Quebec.

[41] The Board has determined in other recent UPS cases, and remains satisfied in the circumstances of this case, that a unit restricted to a specific UPS geographic location may be appropriate. Clerical employees working in Windsor, comparable to clerical employees in Stoney Creek, St. Catharines and Brantford, are not obliged, in order to access the *Code*'s collective bargaining rights, to organize similarly situated employees at approximately 43 other UPS locations in Canada.

[42] It is up to the Teamsters, however, to evaluate the bargaining strength that the smaller units it seeks to represent will have in collective bargaining. That is not an issue for the Board, as long as it is satisfied, as it is here, that the smaller unit remains viable under the *Code*.

[43] Accordingly, the Board dismisses UPS' objection that the only appropriate bargaining unit for its clerical employees must be a Canada-wide all-employee bargaining unit.

B–Is the Teamsters' proposed bargaining unit at the Windsor facility appropriate for collective bargaining?

[44] At UPS' Windsor location, the Teamsters have not applied to represent all clerical employees. The Teamsters seek to represent only 12 employees working at the Ground Centre.

[45] UPS argued that there are not two distinct groups of clerical employees in Windsor.

[46] The Board has considered the parties' divergent views about the Ground Centre and the International Centre.

[47] While the Board has determined that a unit of clerical employees at distinct UPS geographic sites can be appropriate, the Teamsters have failed to persuade the Board of the appropriateness of its proposed bargaining unit of 12 clerical employees working at the Ground Centre.

[48] The Board is satisfied that an appropriate bargaining unit in this case would include all clerical employees at UPS' Windsor location. If the Board were to accept the Teamsters' proposed bargaining unit, then a second certification application might follow for the clerical employees at the International Centre. A multiplicity of clerical bargaining units at a single geographic location with less than 60 clerical employees overall does not make labour relations sense.

[49] The Teamsters did not persuade the Board that the Ground Centre clerical employees were sufficiently distinct or lacked a community of interest with those at the International Centre to justify a separate bargaining unit. While the Board may certify smaller units, the fracturing of clerical employees at UPS' Windsor facility would lead to labour relations issues that an appropriately structured bargaining unit would avoid.

[50] The Board was also concerned regarding the ongoing interaction between employees in the two different centres. For example, a Ground Centre employee regularly retrieves packages from the International Centre work area and places them on conveyor belts to send to the Ground Centre. In another case, an International Centre employee works in the Ground Centre on a daily basis scanning

products for a particular client.

[51] The Board concludes that a bargaining unit seeking to represent a subset of Windsor clerical employees is inappropriate in the circumstances of this case. If the Teamsters want to represent clerical employees at UPS' Windsor location, then the bargaining unit would have to be, at a minimum, comparable to those the Board has previously certified at St. Catharine's, Stoney Creek and Brantford, which covered all clerical employees at those individual locations.

[52] The Board has determined that an appropriate bargaining unit in this case would encompass all clerical employees at UPS' Windsor location. Based on the membership evidence presented, the Teamsters do not have sufficient support for that bargaining unit. The Board is accordingly obliged to dismiss the certification application.

[53] This is a unanimous decision of the Board.

Graham J. Clarke
Vice-Chairperson

John Bowman
Member

David P. Olsen
Member